

IN THE ENVIRONMENT COURT AT
CHRISTCHURCH
I MUA I TE KOOTI TAIAO O AOTEAROA

ENV-2024-CHC-00

UNDER THE

Resource Management Act 1991 (**Act**)

IN THE MATTER OF

An appeal under Clause 14(1) of the First Schedule to the Act

BETWEEN

JOHN AND MARY FLETCHER

Appellant

AND

CENTRAL OTAGO DISTRICT COUNCIL

Respondent

**NOTICE OF APPEAL AGAINST DECISION ON PLAN CHANGE 19 TO THE CENTRAL OTAGO
DISTRICT PLAN**

08 AUGUST 2024

**TO: The Registrar
 Environment Court
 Christchurch**

Notice of Appeal

- 1 John and Mary Fletcher (**Appellant**) appeal against a decision made by the Central Otago District Council (the **Respondent**) to reject their submission on Plan Change 19 to the Central Otago District Plan (**PC19**):
- 2 The Appellant made a submission on PC19.
- 3 The Appellant is not a trade competitor for the purposes of section 308D of the Act.
- 4 The Appellant received notice of the Respondent's decision on PC19 on 07 June 2024. The decision on PC19 was re-notified by way of public notice dated 27 June 2024, this public notice advising that the closing date for lodging appeals on PC19 was amended to 09 August 2024.
- 5 The decision was made by a hearings panel appointed by the Respondent.

Details of the Fletcher Submission And Respondent's Decision

- 6 The Appellant lodged a submission on PC19 regarding the density provisions for the zone Large Lot Residential – Precinct 3 and also regarding the site coverage provisions for the same zone and precinct.
- 7 It was sought that proposed standards LLRZ – S1 and SUB – S1 (and any related provisions), as they relate to the zone – Large Lot Residential – Precinct 3, were amended to provide for a smaller allotment size. PC19 specified a minimum lot size of 6,000m² and the submission sought that this be reduced to 4,000m². It was also sought that proposed standard LLRZ - S4 was amended to provide for a greater building coverage. PC19 specified a maximum site coverage of 10% and the submission sought that this be increased to 20%.
- 8 The decision on PC19 was to accept in part a reduction in density size to 5,000m² and to reject the sought increase in site coverage.
- 9 The Hearings Panel stated at paragraphs 184-191:

399. Mr Derek Shaw¹¹⁵ and Stuart and Mary Fletcher¹¹⁶ have requested that LLRZ (P3) be reduced to 4000m² to provide an opportunity for development of those allotments equal to or less than 1ha. The Panel has considered the request and is of the view that it would be appropriate as suggested by Ms White in her reply that the density be amended to 5000m²

to provide for infill development opportunities that maintains the overall character of the zone.

400. *LLRZ-S1 density for Precinct 3 is to be amended as follows:*

...

7. *The minimum site area per residential unit is 65000m² ¹¹⁷ ~~..or~~*

8. *~~On any site less than 65000m² ¹¹⁸, one residential unit per site. ¹¹⁹ ...~~*

401. *Stuart and Mary Fletcher¹²⁰ have also asked to increase the site coverage for LLRZ(P3) from 10% to 20%. The current zoning would allow for 600m² of built form on a site and the panel agrees with Ms White that this is an appropriate coverage to ensure a predominance of open space over built form consistent with LLRZ-O2.2 and with the approach across Precincts (1) and (2).*

10 In sum therefore, the Panel rejected in part the sought amendments to density and rejected the sought amendment to site coverage provisions as per the Appellant's submission. It was determined that a larger allotment size should be required and that the site coverage standard should remain unchanged.

11 The objectives, policies, rules and standards for the LLRZ (Precinct 3) are set out in Appendix 1 to the Decision: *PC19 Provisions as Amended by Decisions*.

Reasons for the Appeal

12 The reasons for the appeal include, but are not necessarily limited to, the following:

12.1 In preparation of Plan Change 19 the Central Otago District Council did not undertake adequate analysis of the zone and precinct subject to this appeal to determine an appropriate minimum lot size.

12.2 The Hearings Panel failed to consider that the precinct already includes allotments which are smaller than the proposed minimum allotment size, including one which was recently approved by way of resource consent.

12.3 The Hearings Panel did not recognise that a smaller minimum lot size will enable some limited subdivision which ensuring the amenity and character of the area is maintained.

12.4 The Hearings Panel failed to consider the future implications of the determination on lot size including that the application of an appropriate minimum lot size now will enable clearer

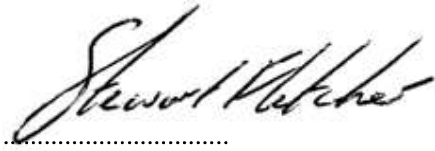
direction for the future of the zone and discourage undersized piecemeal subdivisions in the long term.

- 12.5 The Panel erred in determining the minimum site size as 5,000m² for LLRZ(P3). A minimum site density of 4,000m² would be consistent with the LLRZ objectives and policies as it would result in a well designed and well-connected urban area and an increase in potential housing capacity while maintaining the amenity and character of the area.
- 12.6 The Large Lot Zone to the north east of Precinct 3 provides for a smaller lot size yet there are few distinguishable characteristics between the two areas. On this basis the Decision erred in determining an appropriate minimum lot size without consideration of the zoning and characteristics of adjoining areas.
- 12.7 Increasing the density of LLRZ is consistent with the Council's function and the purpose of the Resource Management Act 1991.
- 12.8 The site coverage provisions under the Operative District Plan provide for up to 40% building coverage. The Decision reduced permitted building coverage to 10% without analysis or due consideration as to whether existing issues had arisen and what an appropriate site coverage would be, based on the nature and characteristics of the area.
- 12.9 The Hearings Panel failed to assess the nature and characteristics of the zone and precincts in determining a consistent and appropriate level of permitted site coverage.

Relief Sought

- 13 The **primary relief** sought by the Appellant is the amendment of density provisions to enable smaller sized allotments and the amendment of site coverage standards to enable greater building coverage. More specifically, amendments sought are as follows:
 - 13.1 That the minimum site density in LLRZ(P3) is amended to 4000m². The associated LLR zone Precinct 3 and SUB rules and standards are amended to reflect a minimum site density of 4000m² within the LLRZ(P3) zone.
 - 13.2 That the maximum permitted site coverage provisions for LLRZ(P3) are amended to 20%. Any associated provisions are also amended to reflect the 20% site coverage provision.
- 14 The Appellant also seeks such other alternative or consequential amendments to the provisions of PC19 that may be required to give effect to the relief sought.

08 August 2024



.....

S W Fletcher

Consultant Planner for John and Mary Fletcher

This Notice of Appeal is issued by **STEWART WILLIAM FLETCHER**, consultant for the above-named Appellant.

The address for service of the above-named Appellant is:

Fletcher Consulting and Planning,

4 Primrose Hill Lane

Casebrook,

Christchurch

Attention: Stewart Fletcher

stewart@fletcherconsulting.co.nz

Appendix 1 – Copy of the submission in relation to the matters raised in this notice of appeal

Resource Management Act 1991

Submission on Notified Proposed Plan Change to Central Otago District Plan

Clause 6 of Schedule 1, Resource Management Act 1991

(FORM 5)

To: The Chief Executive
Central Otago District Council
PO Box 122
Alexandra 9340

Details of submitter

Name: John & Mary Fletcher

Postal address: C/- Fletcher Consulting & Planning, 4 Primrose Hill Lane, Casebrook, Christchurch 8051

Phone: 021 0234 6903

Email: stewart@fletcherconsulting.co.nz

Contact person: Stewart Fletcher

(Name & designation, if applicable)

This is a submission on proposed Plan Change 19 to the Central Otago District Plan (the proposal).

I am not a trade competitor for the purposes of [section 308B](#) of the Resource Management Act 1991

The specific provisions of the proposal that my submission relates to are:

- 1) The density provisions for the zone Large Lot Residential – Precinct 3. This specifically includes proposed standards LLRZ - S1, SUB – S1 and any other consequential or related provisions.
- 2) The site coverage provisions for the zone Large Lot Residential – Precinct 3. This specifically includes proposed standard LLRZ – S4 and any other consequential or related provisions

This submission is:

Density

Proposed standards LLRZ – S1 and SUB – S1 (and any related provisions), as they relate to the zone – Large Lot Residential – Precinct 3, are opposed. It is sought that the density provisions are amended to provide for a smaller allotment size.

The reasons for this opposition include, but are not limited to, that the proposed minimum lot size is larger than what is currently provided for in the Operative District Plan, a smaller allotment size will still maintain the amenity and character of the area, there is no difference in character between this precinct and other areas close by which provide for a smaller allotment size and further analysis could be undertaken to determine what the appropriate allotment size should be.

Site Coverage

Proposed standard LLRZ – S4 (and any related provisions), as it relates to the zone – Large Lot Residential – Precinct 3, is opposed. It is sought that the site coverage provisions are amended to provide for greater site coverage.

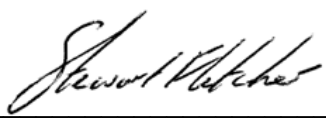
The reasons for this opposition include, but are not limited to, that the current site coverage provisions are understood to provide for up to 40% building coverage and a reduction to 10% is considered to be a significant drop and that further analysis could be undertaken to determine what the appropriate coverage requirement should be.

I / We seek the following decision from the consent authority:

Proposed standards LLRZ – S1 and SUB – S1 (and any related provisions), as they relate to the zone – Large Lot Residential – Precinct 3, are amended to provide for a smaller allotment size and that proposed standard LLRZ - S4 is amended to provide for a higher building coverage.

- **I oppose the application**
- **I wish to be heard in support of this submission**
- **I will consider presenting a joint case if others make a similar submission**

In lodging this submission, I understand that my submission, including contact details, are considered public information, and will be made available and published as part of this process.

PP 

Signature

2 September 2022
Date

Submissions close at 4pm on Friday 2 September 2022

Submissions can be emailed to districtplan@codc.govt.nz

Note to person making submission:

If you are a person who could gain an advantage in trade competition through the submission, your right to make a submission may be limited by clause 6(4) of Part 1 of Schedule 1 of the Resource Management Act 1991.

Please note that your submission (or part of your submission) may be struck out if the authority is satisfied that at least 1 of the following applies to the submission (or part of the submission):

- it is frivolous or vexatious:*
- it discloses no reasonable or relevant case:*
- it would be an abuse of the hearing process to allow the submission (or the part) to be taken further:*
- it contains offensive language:*
- it is supported only by material that purports to be independent expert evidence but has been prepared by a person who is not independent or who does not have sufficient specialised knowledge or skill to give expert advice on the matter.*

Appendix 2 – Copy of the Respondent's Decision.

367. The submitter considers that the site is centrally located and within walking distance to commercial and community facilities, noting that Council services are located in front of the site.
368. The site is considered by the submitter difficult to use land for productive purposes due to the close proximity to existing urban areas and limited infrastructure, noting that unformed legal roads located within the site also affect how the land can be used.
369. The submitter states that the existing boundary does not follow any logical pattern, and the expansions would fit generally within the limits of the current Township.
370. Ms White in her s42A (Stage 2) report agrees with the submitter that the current boundary between the residential and rural area appears arbitrary, and the current boundary is further south than on the eastern and western sides. I consider that there is merit in rezoning the full area north of Caulfield Street until at least the unformed portion of Welles Street as this results in a more consistent urban/rural boundary.
371. Ms Muir has indicated that the Ranfurly wastewater scheme has capacity to accommodate further growth, but that there are limitations on the ability to provide water supply to more properties in Ranfurly. She states that the area up to Welles Street could be supplied water, but capacity to supply water beyond Welles Street is uncertain.

Panel Findings

372. The Panel agrees with Ms White that it would be appropriate for the area to the north of Caulfield Street, up to the unformed portion of Welles Street is zoned LRZ. This is supported by Ms Muir's evidence indicating that this area can be serviced in terms of the current capacity of water and wastewater reticulation in Ranfurly.
373. The remaining area to which the submission relates is to be retained as Rural Residential Resource Area at this time.
374. In terms of s32AA of the RMA, the Panel agrees with Ms Whites assessment that zoning additional land has benefits in providing a modest amount of additional land for residential development, in an area where such expansion is consistent with the surrounding area. I consider the costs associated with the impacts of increased development are outweighed by the benefits.

6 Decisions on Other Submission Points Raised in Evidence

375. The Ministry of Education ⁹⁵ requested that educational facilities be considered as a restricted discretionary activity in the same way as other community facilities. The panel agrees with the recommendation in the reply report by Ms White that it is appropriate for educational facilities to be included in LRZ-R13 and MRZ-R14 as follows:

⁹⁵ Submitter #60

“...Community facilities and Educational Facilities..”

376. Mr John Lister⁹⁶ considers that the minimum allotment size in MRZ should vary depending on the size of the adjoining allotments. The Panel agrees with Ms Whites recommendation in her s42A report (Stage 1)⁹⁷ that this is not appropriate vary lot sizes depending on the size of the adjoining allotments. Mr Lister also sought an increase in the standard for road widths which as indicated by Ms White is outside the scope of PC19.
377. Mr Werner Murray⁹⁸ considers that some development everywhere is appropriate and that small increases in density within all zones will not affect the character of that zone. The Panel agrees with Ms White in her reply that it is not appropriate to allow for an increase density without consideration of a change in character and whether there is an ability to service increased density.
378. Mr Murray also seeks and re-instatement of the multi-unit rule in the operative Plan in the LRZ and LLRZ provisions. The Panel notes that the proposed provisions in both zones allow for multi-unit for two allotments and the construction of a minor unit as a permitted activity in LRZ and LLRZ (effectively three units) subject to meeting density standards. The Panel agrees with Ms White’s recommendation in her reply that providing a rule that would allow a density beyond this will not align with the objectives of the respective zones and is not the most appropriate way to implement policies.
379. Mr Wally Sanford⁹⁹ sought several infrastructure and development standards amended as addressed below:
- a) That ROW’s are vested with Council as roads when further development occurs. The panel note that Councils engineering standards require that ROW’s that serve more than 6 allotments that the Panel is of a view adequately addresses the matter of vesting of Rows as roads beyond a certain threshold. Submission point not accepted.
 - b) That a vibration construction standard should be introduced in relation to residential zoning. The Panel agrees with Ms White’s reply that such a standard would be better considered as a district-wide provisions for earthworks/subdivision standards rather than in relation to the residential chapter review. Submission point not accepted.
 - c) Minor residential units should have compliant accesses. The provision for minor residential units requires the unit to share the existing access with the principal residential unit, a breach of these standards requires a resource consent. The Panel does not consider it necessary to make any changes to the standards applicable to minor units. Submission point not accepted.
 - d) The requirement for a 30m setback from State Highways is not necessary for noise and should be removed on the basis that it is not required for noise. This standard

⁹⁶ Submitter #75

⁹⁷ Stage 1 s42A report paras 156-157

⁹⁸ Submitter #156

⁹⁹ Submitter # 144

relates to properties where a building line restriction exists and does not apply to all properties in residential zones adjacent to a State Highway. The building line restriction relates to a district-wide provision in section 12 of the Plan that is outside the scope of PC19. Mr Sanford has not provided any technical advice to support the assertion that the standard is not required. The Panel agrees with the recommendation of Ms White in her s42A Recommendation (Stage 2) that Rule 12.7.7 is outside the scope PC 19. Removal for the requirement would effectively render the rule redundant. The Panel is of the view that any consideration of the Building Line Restriction would be better addressed through a review of the district-wide provisions in section 12.

380. Mr Craig Barr¹⁰⁰ requested that the excavation rules also be extended to include provision for fill. The Panel agrees with Mr Barr that the placement of fill that would alter ground levels should also be included in excavation rules. The Panel considers it is appropriate that LLRZ-R10, LRZ-R10 and MRZ-R11 are amended as follows:

<i>Excavation <u>and Fill</u></i>
<i>Activity Status: PER</i>
<i>Where: 1. Any extraction <u>or fill</u> of material shall not exceed 1m in depth within 2m of any site boundary; and...</i>

381. Mr Barr¹⁰¹ sought an amendment to the introductions as they relate to FGO areas identified in the Vincent Spatial Plan. The Panel considers this appropriate given decisions on zoning requests that utilise the FGO mechanisms beyond those identified in the Vincent Spatial Plan. The Panel agrees with the recommendation of Ms White in her reply that the introduction be amended as follows:

The Future Growth Overlay identifies ~~any~~ areas that hasve either been signalled in the Vincent Spatial Plan for [low density/large lot/medium density residential zoning], in future, or other areas identified as being appropriate for future residential growth.~~The provisions applying to this area are those of the underlying zoning, and therefore a Plan Change will be required to rezone this area in future.~~ However, there are some wider servicing constraints to developing these areas that must be addressed before they are able to be developed. Provisions are therefore applied in the Overlay ~~is intended to identify any location where future growth is anticipated, when further supply of residential land is required, and provided that~~ restricting development until there is capacity within the reticulated water and wastewater networks to service the additional development.

382. Foodstuffs (South Island) Properties Limited¹⁰² sought an additional policy be included in the MRZ provisions that disregards the effects of commercial activities in close proximity to residential activity established in the MRZ. The Panel agrees with Ms White in her reply that the requested policy changes is not related to achieving the MRZ objectives. Given changes are not proposed to the rule framework, it is not clear how the policy would be implemented, and that the additional policy is not necessary to achieve the outcomes sought.

¹⁰⁰ On behalf of submitters #82, #135, #139, #146 and #163

¹⁰¹ On behalf of submitter #164

¹⁰² Submitter #61

383. Mr John Duthie¹⁰³ sought a zero-lot line development. The meaning of the term was clarified by Mr Duthie in his evidence as a concept that requires each dwelling in the MRZ to be setback a minimum amount from each side boundary (i.e. 1m each), the ‘total’ setback— being 2m - could be provided on one side only, with the dwelling on one side of the boundary built up to the boundary, but still setback 2m from the adjoining dwelling.

384. The Panel considers this type of exception is appropriate in MRZ-S6 and has determined it is appropriate to amend MRZ-S6 as follows:

Any building or structure shall be setback a minimum of:

1. 1m from any internal boundary (except that this does not apply to common walls along a site boundary, or to an uncovered deck less than 1m in height); and
2.

MRZ-S6.1 does not apply to:

- Uncovered decks of less than 1m in height.
- Internal boundaries within a retirement village.
- Two or more residential units connected horizontally and/or vertically by a common wall or floor.
- ‘Zero-lot line’ development, where no setback applies on the internal boundary of one side of a building, provided the building is setback 2m from the boundary on the other side of the building, and an appropriate legal mechanism allows for maintenance access to the building.

385. Mr Duthie on behalf of Wooing Tree Developments sought an activity status of restricted discretionary rather than discretionary when located within 500m of a town centre. The Panel agrees Ms White in her reply that having a rule simply saying “within 500m of the town centre” would work, without defining or mapping what is considered to be the town centre. Ultimately the Panel also agrees with Ms White that it is not necessary to limit where visitor accommodation is located to achieve the outcomes sought in the MRZ.

386. Lynette Wharfe¹⁰⁴ sought an increase in the setback in LLRZ to 25m where adjacent to the Rural Resource Area along with the addition of a matter of discretion for potential reverse sensitivity effects on adjacent rural activities. The Panel agrees with Ms Whites recommendation in her Stage 1 section 42A report and that it is unreasonable to require such a large setback in an urban zone and again note that there are other zones within urban areas that adjoin rural areas, so applying the setback to LLRZ would result in an inconsistent approach.

387. Ms Wharfe also sought an amendment to the definition of noxious activity, to exclude reference to plants in residential zones. The Panel agrees that plants in a domestic context, and associated with a residential activity on a site should be excluded from the definition. This would allow for activity at a scale appropriate in a residential zone.

388. The Panel considers it appropriate to amend the definition of noxious activity as follows:

¹⁰³ On behalf of submitter #79

¹⁰⁴ On behalf of submitter #89

Noxious Activity

in a residential zone, means any of the following:

1. ...

2. *The intensive confinement of animals (excluding the keeping of domestic animals associated with residential activities);*

3. *The growing of plants or fungi other than as associated with residential activity on a site (excluding domestic glasshouses)...*

389. Matt and Sonia Conway¹⁰⁵ are seeking to ensure that access to back land is facilitated through provisions to avoid a situation where proposed zoning cannot be realised due to a lack of appropriate access and to ensure adequate access to services. The submitters property is located in the area on Dunstan Road, Alexandra identified as LLRZ. The Panel notes that access to back land is provided as a matter of discretion requiring facilitation of access. The Panel agrees with Ms White in her Stage 1 section 42A report and reply that the provisions as notified provide an appropriate mechanism to provide for access to back land.

390. Similarly to Panel are also of view that the matters of discretion associate with subdivision rules adequately provide for the location design and construction of services.

391. Paul and Angela Jacobson¹⁰⁶ questioned the rationale for the size of allotments. The panel agrees with Ms White that the zoning notified appropriately reflects the outcome of the Vincent Spatial Plan.

392. Nicola Williams¹⁰⁷ sought the addition of a new objective specifically providing for aged care and a permitted activity status in the LRZ and MRZ for retirement villages. The Panel agrees with Ms White that the proposed objective suggested is not appropriate. The evidence submitted by Ms Williams suggests that retirement villages are essentially residential activities. Given this the panel agrees with Ms White that a retirement village can be adequately managed through the residential provisions and specific provisions are not necessary.

393. Ryman Healthcare Limited¹⁰⁸ requested the inclusion of three new policies and a matter of discretion that specifically relates to retirement villages. The Panel agrees with Ms White's recommendation in her Stage 1 section 42A report and her reply following the hearing of evidence, that the proposed policies need to be considered in the context of the achievement of the objectives in PC 19 and not alignment with the Enabling Housing Act.

¹⁰⁵ Submitter #80

¹⁰⁶ Submitter #14

¹⁰⁷ On behalf of submitter #158

¹⁰⁸ On behalf of submitter #160

394. Brodie Costello¹⁰⁹ sought a reduction in the provision for landscaping in the MRZ from 30% to 25%. The Panel agrees with the evidence submitted by Mr Costello and supported by Ms White in her reply, and has determined that MRZ-S8 be amended as follows:

At least ~~30~~25% of the net site area of any site shall be planted in grass, trees, shrubs or other vegetation.

395. Joanne Skuse¹¹⁰ sought re-instatement of the multi-unit rule from the operative District Plan. The Panel agrees with Ms White in her reply that the test for the appropriateness of a rule is implementation of policies and achieving objectives and that allowing for development at this scale does not align with the objective of LRZ and LLRZ.

396. Ms Skuse¹¹¹ questioned performance standard MRZ-S10 and requested that MRZ-S12 be deleted. The provisions in the MRZ and Medium Density Guidelines have been developed by Urban Design experts and represents industry practice for Medium Density Zones. The Panel agrees with Ms White in her recommendation¹¹² the standards should be retained.

397. Ms Skuse¹¹³ sought the deletion of LRZ-R1 and LLRZ-L2 both of which limit residential activity to one per site on the basis that the rule is subject to density requirements that limit development based on the size of the allotment. The Panel agrees with Ms White's recommendation that LLRZ- R1 and LRZ-R1 be amended as follows:

LLRZ-R1:

Activity Status: PER

Where:

~~1. There is no more than one residential unit per site.~~

And Where the activity complies with the following rule requirements:

LLRZ-S1 to LLRZ-S6

LRZ-R1:

Activity Status: PER

Where:

~~1. There are no more than two residential units per site.~~

And Where the activity complies with the following rule requirements:

LRZ-S1 to LRZ-S7

398. Ms Skuse¹¹⁴ sought an increase in the volume of LLRZ-R10 to 300m², on the basis that it was consistent with the level applied in the Queenstown Lakes District (QLDC) and inefficient to need consent for earthworks when building dwellings. Based on advice from Ms White that the QLDC volume is one of the highest found, the Panel does not consider it necessary to make any further changes, noting that the earthworks provision has been amended by decisions to exclude excavation associated with the construction of a dwelling.

¹⁰⁹ On behalf of submitter #148

¹¹⁰ On behalf of submitters #161 and #162

¹¹¹ On behalf of submitters #161 and #162

¹¹² Stage 1 Section 42A Report

¹¹³ On behalf of submitters #161 and #162

¹¹⁴ On behalf of submitters #161 and #162

399. Mr Derek Shaw¹¹⁵ and Stuart and Mary Fletcher¹¹⁶ have requested that LLRZ (P3) be reduced to 4000m² to provide an opportunity for development of those allotments equal to or less than 1ha. The Panel has considered the request and is of the view that it would be appropriate as suggested by Ms White in her reply that the density be amended to 5000m² to provide for infill development opportunities that maintains the overall character of the zone.

400. LLRZ-S1 density for Precinct 3 is to be amended as follows:

...

7. *The minimum site area per residential unit is ~~65000m²~~¹¹⁷, or*

8. *On any site less than 65000m²¹¹⁸, one residential unit per site.*¹¹⁹ ...

401. Stuart and Mary Fletcher¹²⁰ have also asked to increase the site coverage for LLRZ(P3) from 10% to 20%. The current zoning would allow for 600m² of built form on a site and the panel agrees with Ms White that this is an appropriate coverage to ensure a predominance of open space over built form consistent with LLRZ-O2.2 and with the approach across Precincts (1) and (2).

402. Mr Dent¹²¹ requested clarity about the term 'ancillary' in the context of LRZ-R6 (visitor accommodation). Ms White has suggested an amendment in her reply that the Panel agrees is appropriate would be appropriate to clarify the intent of the rule.

403. Rule LRZ-R6 is to be amended as follows:

...

~~2. is ancillary to a residential activity~~ In addition to the visitor accommodation activity, at least one person resides permanently on the site; and-

~~23.~~ The maximum occupancy is 6 guests per night.

404. Mr Dent¹²² also submitted that the recommendation in the s42A report (Stage 1) regarding rule SUB-R5 has the potential to disincentivise the creation of lots less than 400m² in the MRZ. The Panel agrees with Ms White in her reply that given the inclusion of an additional controlled activity rule as recommended in the section 42A will help incentivise integrated land use and subdivision development for multi-unit, relying on SUB-R4. SUB-R5 is to be deleted.

405. Ms Rachel Law on behalf of a number of submitters¹²³, submitted on a number of policies, rules and performance standards, as outlined and considered below:

¹¹⁵ Submitter #77

¹¹⁶ Submitter #98

¹¹⁷ Submitter #77

¹¹⁸ Submitter #77

¹¹⁹ Evidence of Craig Barr (#82 and #135)

¹²⁰ Submitter #98

¹²¹ On behalf of submitter #93, #94 and #95

¹²² On behalf of submitter # 96

¹²³ On behalf of submitters #165, #21, #145, #30, #31, #32, #33, #51

- a) In relation to submission points associated with relocated dwellings and LLRZ-P1; LRZ-P1; MRZ-P1; LRZ-R3; MRZ-R4 and LRZ-R3, the Panel agrees with Ms White's recommendation in her section 42A report (Stage 1) that amendments be made to LLRZ- R3, LRZ-L3 and MRZ-R4 changing the activity status to permitted, including a suite of conditions agreed by NZ Heavy Haulage¹²⁴ and making a breach of conditions a restricted discretionary activity. The Panel agrees with Ms Whites recommendation for the reasons identified in her report and adopts her assessment under section 32AA of the RMA.
- b) The submitters represented by Ms Law also sought amendments to LLRZ-S4 seeking 30% and 20% site coverage in LLRZ (P2) and LLRZ (P3) and an amendment of LRZ-S4 to provide for a 50% site coverage. The Panel agrees with the recommendation of MS White in her section 42A report (Stage 1) that the site coverage in LLRZ-S4, LRZ-S4 should remain as notified.
- c) Several changes to MRZ-P6, LLRZ-R10, LRZ-R10, LRZ-R12, MRZ-R11 and MRZ-13. The Panel agrees with the recommendations of Ms White in her section 42A report (Stage 1) regarding these submission points.
- d) The submitters represented by Ms Law also requested changes to the activity status associated with a breach of performance standards LLRZ-S1, LRZ-S1 and MRZ-S1 from non-complying to discretionary. The submitters considered that given the Resource Management Act reform replacement legislation was in the process of being introduced with indications that the non-complying activity status would be removed, it was appropriate to pre-empt this change by removing the status ahead of any legislative requirement to do so. The Panel agrees with Ms White¹²⁵ that this is inappropriate. The Panel also agrees with Ms Law in her reply report that the application of a non-complying status for a breach of standards creates a "bottom line" that is clear to users of the plan.
- e) Ms Law sought a consequential change to MRZ-R7 resulting from the removal of MRZ-7.3. The Panel agrees with the request and the recommendation of Ms White in her reply including that the same change should also apply to LLRZ-R6 and LRZ-R6. The resulting change being the deletion of reference to R6.3/R6.7 from the matters of discretion associated with LLRZ-R6, LRZ-R6 and MRZ-R7.
- f) Submitters sought amendments to MRZ-S2, MRZ-S7-S10 . The Panel agrees with the recommendation by the s42A (Stage 1) report writer for the reasons outline in the report and as indicated in Ms Whites reply.
- g) In relation to MRZ-S11 the submitters requested an increase in the minimum height of a fence from 1.0m to 1.2m and to remove the requirement for transparency. The Panel accepts that the height can be increased to 1.2m but agrees with the recommendation of Ms White that the height that the requirement for transparency

¹²⁴ Submitter #151

¹²⁵ S42a Report writers reply Appendix 1.

should remain, noting that the requirement aligns with MRZ-P1 and is based on expert urban design advice.

- h) The submitters are seeking a definition of margin of the lake in MRZ-S6 which requires a 15m lake setback. The Panel notes that this standard exists in the Operative District Plan. The Panel has considered the evidence presented by Ms Law and the reply by Ms White and agree that the provision could be clearer, and agree with Ms Whites recommendation that the following amendments be made to LLRZ-S6, LRZ-S6 and MRZ-S6:

Any building or structure shall be setback a minimum of:

...

2. 15m from any property boundary which is adjacent to the margin of any lake.

- i) In relation to SUB-R2 the submitter considers there is a gap where an allotment could be created as part of subdivision for a public utility that potentially creates a balance . The Panel accepts this point and the recommendation by Ms White in her reply that the provision in SUB-R2 be amended as follows:

SUB-R2	Subdivision to create a <u>new allotment for a network or public utility or a reserve</u>	
All Residential Zones	Activity Status: CON <u>Where:</u> 1. <u>Any balance allotment complies with SUB-S1.</u> Matters of control are restricted to: ...	<u>Activity Status when compliance is not achieved with R2.1: DIS</u>

- j. The submitters request the new controlled activity SUB rule, recommended in Ms Whites s42A report (Stage 1) should have fewer ‘matters of control’ than a restricted discretionary activity. The Panel agrees with Ms White in her reply that it does not necessarily follow that a controlled activity should have fewer controls as the difference between the two activity status’ is a consent should be granted for a controlled activity whereas there is an ability to decline consent with a restricted discretionary activity.
- k. Ms Law on behalf of the submitters is seeking to remove the non-complying activity status for SUB-R5. As indicated in (d.) the Panel also agrees with Ms Law in her reply report that the application of a non-complying status for a breach of standards creates a “bottom line” that is clear to users of the plan.

369. Residents for Responsible Development Cromwell¹²⁶ raised concerns regarding performance standards associated car parking and road widths. The Panel agrees with Ms White in her s42A report (Stage 1) regarding these points.
370. Ms Law on behalf of Thyme Care Properties Ltd¹²⁷ is seeking MRZ for the property at 84 and 94 Kaware Road. The Panel understands from evidence from Mr Woodward¹²⁸ that the hospital on the site was established some time ago, with additional units added in around 2003, but that a designation may have previously applied to the site that enabled the establishment of the hospital. Ms Law has suggested that the existing built form sets a precedent *“that development of this type is suitable on the west side of state highway 6.”* The Panel does not agree with this assertion, and agrees with Ms White in her reply that given the history of the site this cannot be used to establish that further development on the western side of the State Highway is suitable, noting that the Spatial Plan explicitly rejects this.
371. The submission from Mr John Duthie on behalf Wooing Tree¹²⁹ is seeking the inclusion of an area of Business Resource Area (BRA) that reflects the commercial activities provided for under the provisions of a resource consent obtained by Wooing Tree under Covid-19 Recovery (Fast-Track Consenting) Act 2020.
372. The PC 19 zoning for the Wooing Tree site reflects the outcome of the Cromwell Spatial Plan by re-zoning the entire site as MRZ. The operative District Plan provides for a mixture of RRA (6), RRA (1) and Business Resource Area. The Business Resource Area is located under the residential development authorised by the resource consent issued under the Fast-Track Consenting Act. The consent provides as Masterplan that includes two areas identified as ‘commercial’.
373. The resource consent allows for a restricted level of commercial activity on the areas identified in the Masterplan as ‘commercial’ and the submitter is able to undertake a scale of commercial development the EPA felt appropriate.
374. The Panel agrees with Ms White that considering re-zoning as Business Resource Area is more appropriately left until the review of the business zone.
375. Mr Duffie is also seeking a reduced building line restriction for the State Highway 8B and State Highway 6 boundaries to the same level as permitted by their Fast-Track consent allows (18m). The Panel consider this to be appropriate.
376. Ms Kathryn Adams¹³⁰ has requested that the Zoning of the Cromwell Golf Course be changed to give effect to the outcome of the Cromwell Spatial Plan and re-zone the site MRZ. The Panel agrees with Ms White in her recommendation that given lease arrangement in place the provision for growth is unlikely to be able to be given effect to within lifespan of the District Plan and the outcomes sought by the MRZ objectives would not be achieved.
377. Billie Marsh¹³¹ notes in their submission that PC19 does not propose to alter the current Rural Settlement zoning but asks that Tarras be considered for residential zoning in the future. The

¹²⁶ Submitter #75

¹²⁷ Submitter #145

¹²⁸ Further Submitter #263 – Van Der Velden Family Trust

¹²⁹ Submitter #79

¹³⁰ Submitter #149

¹³¹ Submitter #116

Panel agrees with the recommendation from Ms White that PC 19 does not propose to amend any Rural Settlement zones and future growth in Tarras would be better considered as part of a review of the Rural Settlement provisions at a later date.

378. Mr John Sutton¹³² has requested a LRZ FGO be applied to his property at 475 Clyde-Alexandra Road, in particular the top of the terrace adjacent to FGO (LRZ) on Muttontown Road.

379. Ms Muir states that this area could be serviced for water but cannot be serviced for wastewater, and notes that there is no plan for reticulation of this area in the future.

380. The Panel agrees with the recommendation of Ms White in her s42A report (Stage 2) that the gully provides a clear and appropriate break between the FGO (LRZ) and the remaining rural area. The Vincent Spatial Plan identified the land as suitable for Rural Residential Development, consistent with the land to the east and south.

381. Following the hearing Ms White in her reply considered the request of behalf of the submitter that the area on the terrace above the gully, as shown in figure 20 and immediately adjacent to the FGO (LRZ) be re-zoned FGO (LRZ) to be appropriate.

382. Ms White notes that the effect of PC19 being that this wider site remains a rural zone, resulting in strip of rural land remaining between LRZ (FGO)/LLRZ (FGO) to the west and Rural-Residential zoning to the east.



Figure 22 – Terrace Area shown in orange

383. Given this and the fact that the site is unable to be serviced the Panel is of the view that the site should retain its current Rural Resource Area zoning, other than the terrace area identified in figure 22, which is to be re-zoned as FGO (LRZ).

¹³² Submitter #76

384. The submission received from Annetta and Ross Cowie¹³³ opposes the inclusion of a MRZ in Clyde. The Panel agrees with the recommendation of Ms White in her section 42A (Stage 2) report and her reply report, that the zoning is appropriate and the concerns raised about impacts on heritage properties have been carefully considered by both urban design and heritage experts. These will also be supported by the changes proposed through PC20 and the related heritage guidelines.

385. MA & JM Bird¹³⁴ have requested that 41 Manuherikia Road, which is identified in an FGO is rezoned to Large Lot Residential (Precinct 1) now. The Panel considers changes made to the framework for FGO earlier in this decision in part addresses the submitters request, in an appropriate way given the infrastructure constraints.

7 Statutory Considerations

372. The relevant statutory considerations are outlined in Section 3 of this decision.

373. Overall, the Panel is satisfied that the provisions of the plan change, as recommended to be amended, are the most appropriate way to achieve the objectives of the District Plan, are in accordance with Part 2 of the RMA, and meet all other relevant statutory tests.

374. The panel also adopts the s32AA evaluations provided by or accepted by Ms White in her section 42A and her Reply report, in support of the amendments recommended to be made to the PC19 provisions after notification.

¹³³ Submitter #107

¹³⁴ Submitter #1

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